**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

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| Order Instituting Investigation to Consider Policies to Achieve the Commission's Conservation Objectives for Class A Water Utilities. | Investigation 07-01-022 (Filed January 11, 2007) |
| In the Matter of the Application of Golden State Water Company (U 133 E) for Authority to Implement Changes in Ratesetting Mechanisms and Reallocation of Rates. | Application 06-09-006 (Filed September 6, 2006) |
| Application of California Water Service Company (U 60 W), a California Corporation, requesting an order from the California Public Utilities Commission Authorizing Applicant to Establish a Water Revenue Balancing Account, a Conservation Memorandum Account, and Implement Increasing Block Rates. | Application 06-10-026 (Filed October 23, 2006) |
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# REPLY BRIEF OF SUBURBAN WATER SYSTEMS ON PHASE 1A ISSUES

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# REPLY BRIEF OF SUBURBAN WATER SYSTEMS ON PHASE 1A ISSUES

## I. INTRODUCTION

Pursuant to Rule 13.11 of the Rules of Practice and Procedure of the California Public Utilities Commission, and as directed by Administrative Law Judge Grau at the August 2, 2007 evidentiary hearing, Suburban Water Systems ("Suburban") hereby submits its Reply Brief in Phase 1A of the above-referenced proceeding. In this Reply Brief Suburban responds to the Opening Brief of the Consumer Federation of California ("CFC"), the Opening Brief of The Utility Reform Network, National Consumer Law Center, Latino Issues Forum and Disability

Rights Advocates (collectively, "Joint Intervenors"), and the Opening Brief of the Division of Ratepayer Advocates ("DRA"). As discussed in more detail below, the arguments set forth in these briefs are flawed and the Commission should give them little weight.

CFC objects to the settlement agreement that Suburban entered into with DRA on rate design and the water revenue adjustment mechanism ("WRAM"). CFC's objections are limited to the rate design portion of the settlement; it states in its brief that it has withdrawn its objection to Suburban's proposed WRAM.[1] In developing the proposed rated design, Suburban and DRA balanced a variety of considerations, including encouraging conservation, equity, simplicity, consistency, revenue neutrality, maintenance of Suburban's "zone" rate structure, the demand characteristics of difference meter sizes, the impact of the proposed rate design on low income customers,[2] and the California Urban Water Conservation Council ("CUWCC") and American Water Works Association ("AWWA") rate design standards.[3] This analysis resulted in a rate design that will further the Commission's goal of encouraging water conservation.

CFC proposes a variety of modifications to Suburban's proposed rate design. Its proposals, however, invariably fail to take into account one or more of the considerations listed above. Moreover, any modification to one portion of the proposed rate design will create the need to modify the entire rate design, a fact that CFC ignores completely. CFC also urges the Commission to undertake several lengthy investigations into rate, cost allocation and design issues. Adoption of CFC's recommendations would delay the implementation of conservation rates for years. The Commission should disregard CFC's proposals and adopt the Suburban/DRA proposed rate design.

[1] CFC Brief, p. 30.

[2] Reporter's Transcript ("RT") 11:8-27 (Kelly/Suburban).

[3] RT 16:1-23 (Steingass/DRA).

The Joint Intervenors object to the method of calculating the discount given to qualifying low income customers under the Low-Income Ratepayer Assistance ("LIRA") program proposed by Suburban and DRA in their settlement on low-income issues. Under the settlement between Suburban and DRA, LIRA customers would receive a $6.50 reduction on their bills. This set discount balances the need to assist low-income customers with the Commission directive to encourage conservation. Additionally, the Commission has approved this type of low-income discount for multiple water companies in the past.

The Joint Intervenors propose that LIRA customers receive a 15% reduction on the total bill. Not only would such a discount remove the incentive to conserve water, but also the Joint Intervenors fail to address the impact on non-qualifying customers, as well as the increased costs of implementing such a discount. The Joint Intervenors claims of increased benefits to a certain unspecified number of low-income customer are unsupported and do not justify modifying the settlement between Suburban and DRA.

DRA objects to Suburban's recovery of the expenses incurred to participate in this proceeding, or at least the expenses that Suburban has incurred or will incur before a Commission decision authorizing a memorandum account. This includes the costs associated with developing and establishing a conservation rate design and low-income support program, legal and consulting services, public education and outreach expenses, and data collection and reporting expenses. Recovery of these expenses is fair and equitable and is consistent with Commission policy and precedent. Contrary to DRA's claims, these expenses are not already included in Suburban's current rates, nor would recovery of these expenses violate policies against retroactive ratemaking. The Commission should disregard DRA's arguments and authorize Suburban to recover the expenses associated with this proceeding.

Suburban will address the arguments of CFC, the Joint Intervenors, and DRA in more detail below. The Commission should dismiss the objections of these parties, adopt the settlement agreements with DRA and the Joint Intervenors without modifications, and authorize Suburban's recovery of <u>all</u> of the expenses incurred as part of this proceeding.

## II. CONSUMER FEDERATION OF CALIFORNIA

As discussed above, Suburban and DRA balanced a variety of competing considerations to develop a rate design that furthers the Commission objective of encouraging conservation. Suburban and DRA developed the proposed rate design based on analysis of voluminous data regarding customer consumption within Suburban's service territory. The Suburban/DRA rate design represents a significant improvement over Suburban's original rate design.

CFC fails to recognize the need to implement conservation rates in a timely fashion. CFC bases its arguments on misinterpretations of data and the evidentiary record. In proposing changes to the Suburban/DRA proposed rate design, CFC also fails to take into account the numerous competing considerations necessary to develop a fair and reasonable rate design.

CFC's objections to the proposed rate design fall into two categories: (1) criticisms of the breakpoints, the number of tiers, and consideration of seasonality, and (2) issues related to the tracking and treatment of multiple dwelling unit residential customers. CFC also addresses data collection and makes general recommendations regarding cost issues.

### A. The Commission Should Not Delay Implementation of Conservation Rates

The Commission, both in its Water Action Plan and in the Order Instituting Investigation that initiated this proceeding, recognizes the importance of encouraging water conservation.[4] Since pricing signals are one of the most effective ways to encourage conservation, the Commission appropriately seeks to implement conservation rates in a timely manner. The fact that California recently experienced an unusually dry winter and that nearly

[4] Water Action Plan, pp. 8-11; *Order Instituting Investigation to Consider Policies to Achieve the Commission's Conservation Objectives for Class A Water Utilities,* I.07-01-022, 2007 Cal. PUC LEXIS 2, *2-7.

every day brings a fresh newspaper headline warning of possible drought only makes this goal more urgent. The parties to this proceeding appropriately share this sense of urgency, with the notable exception of CFC. CFC recommends that the Commission postpone implementation of conservation rates for several years.

In its brief, CFC suggests a myriad of steps that the Commission should take before it implements conservation rate designs. These range from the changes to the rate design proposed by Suburban and DRA, discussed below, to the development of a new Standard Practice for the allocation of costs between customer classes.[5] Indeed, CFC specifically urges the Commission to postpone implementation of conservation rates until after (1) each water utility develops a cost allocation study, reviewed in a general rate case; (2) each water utility develops conservation rates for all customer classes; and (3) each water utility completes marginal costs studies.[6] These recommendations would take years to complete, and to what end? CFC does not provide any evidence to support the supposed benefits of these actions.

CFC fails to recognize that rate designs evolve over time. As part of this proceeding, the Commission is seeking to implement conservation rate designs for the first time for several water utilities. Since rate design is fact-specific, it is likely that the water utilities will have to adjust the rate designs at a later date. This is no reason to delay implementation of conservation rates, however. Timely implementation of conservation rates serves two purposes: (1) encourages much-needed water conservation and (2) provides data on the impact of conservation rates that can be used to fine-tune the rate designs over time. CFC would have the Commission forgo these opportunities, however, in order to undertake time consuming and unnecessary investigations and studies. The Commission should reject CFC's preposterous request to delay implementation of conservation rates for several years.

[5] CFC Brief, p. 26

[6] CFC Brief, p. 3.

### B. The Two-Tier Rate Design is Reasonable and Equitable

Suburban and DRA have proposed an increasing block rate design with two blocks for Suburban's residential customers.[7] Suburban and DRA adjusted the break points by meter size because of the concerns about the impact on low-income customers. Suburban's original design had the same usage break points regardless of meter size. DRA correctly noted that different meter sizes probably met different water needs. After analyzing the data, Suburban and DRA calculated new break points based on the actual average usage characteristics based on meter size.[8]

CFC argues that the break point between the first and second tier (20 ccf) is too high. CFC bases its argument, at least in part, on its claim that the data that Suburban and DRA used to develop the break points is unreliable.[9] According to CFC, "The usage figures in Zone 3 of the Whittier/La Mirada District were inexplicably low."[10] This zone, however, represents only 89 customers out of 74,000. Due to its small size, the data regarding the usage characteristics for this zone is unreliable. CFC fails to address the data for the other 73,000+ Suburban customers, which does support the break points proposed by Suburban and DRA.

CFC also criticizes Suburban and DRA for not using winter usage as a proxy for indoor use and using that as the breakpoint between the blocks.[11] Instead, Suburban and DRA set the upper level of the first block at the midpoint between the average monthly (annual) consumption and average summer consumption. Suburban and DRA used this method to set the

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[7] As directed by the Commission, Suburban and DRA limited their proposal to residential customers only (*Application of Suburban Water Systems (U 339-W) for Authority to Increase Rates Charged for Water Service*, D.06-08-017, 2006 Cal. PUC LEXIS 369, "2006 Cal. PUC LEXIS 369",*11.).

[8] Exhibit 7, Joint Motion for Adoption of the Settlement Agreement, pp. 3-4.

[9] CFC Brief, p. 16.

[10] *Id.*

[11] *Id.*

upper level because of concerns about the impact of conservation rates on low income customers, both those in single family residences (often with more than average people per household) and those in multiple dwelling unit residences.

CFC dismisses these concerns. "It is not clear why, in the Suburban settlement, low-income customers were included among residential customers whose bills would be calculated on tiered rates."[12] First, Suburban believes that it is important for all customers, whether low-income or not, to conserve water. There is no reason to exclude low-income customers from increasing block rates. Second, Suburban currently does not identify or track low-income customers separately in its billing system, so there would be no way to exclude their data from the rate design analysis. Third, as discussed in more detail below, multiple dwelling unit residences are properly categorized as residential customers and Suburban does not track them separately.

More troubling, however, is CFC's cavalier dismissal of the potential for harm caused by a rate design that has a disparate impact on low-income customers. For an organization purporting to represent consumer interests, CFC is quick to sacrifice the well being of low-income consumers in order to theoretically increase conservation by an undefined amount. By contrast, Suburban and DRA weighed the need to encourage conservation against the need to maintain affordability for low-income consumers and developed a rate design that balanced the two.

In addition to advocating a lower breakpoint between blocks, CFC recommends that the Commission add a tier to the rate design for the San Jose Hills service district.[13] CFC argues:

> Further, the evidence shows there is a need to add a third tier in at least one of Suburban's water districts, if one follows DRA criteria. The parties' decision to offer only one additional tier was

[12] *Id.*, pp. 16-17.

[13] *Id.*, p. 18.

> based on a claim that summer usage is not more than twice winter usage. A comparison of the average of the three highest months' usage in each of the districts (Whittier: 16.3 Ccf; San Jose Hills: 31.7 Ccf) to the average of the three lowest months' usage (Whittier: 9Ccf; San Jose Hills: 11.76), however shows that at least in the San Jose Hills district, there should be a third tier. This error should be corrected by the Commission if settlement rates were implemented.[14]

Contrary to CFC's claim, there is no error. First, after extensive review of the data, Suburban and DRA selected summer as best being represented by the months June through September. Therefore, Suburban and DRA based their analysis on the four highest usage months, rather than the three highest used months used by CFC. Second, in their analysis, Suburban and DRA focused on the Zone 1, which is where the majority of San Jose Hills customers are located (21,500 customers out of 40,105 total San Jose Hills customers). Using this data, the summer usage average is 25.3 ccf versus 15.13 ccf in winter, which is a multiple of substantially less than two. Therefore, there is no need for a third-tier for the San Jose Hills district.

A two-block rate structure is also superior because of its simplicity. In its brief, CFC accuses Suburban and DRA of using simplicity as an excuse to avoid sending conservation signals to Suburban's customers.[15] CFC claims that Suburban testified that "the maximum effect on conservation was more likely to occur under the 3-tiered rates Suburban proposed than under settlement rates."[16] An examination of the portion of the transcript cited by CFC, however, reveals no such testimony. Instead, Suburban testified that under the three-block rate design originally proposed by Suburban, low-income customers "would have suffered without a doubt."[17] Suburban's rate design already addresses two service districts, three elevation zones and multiple meter sizes. Adding an additional tier would significantly complicate the rate

[14] *Id.*, pp. 18-19 (internal citation omitted).

[15] *Id.*, p. 18.

[16] *Id.*, p. 18, citing RT 46.

[17] RT 46:6-11 (Kelly/Suburban).

design just for the possibility of some unspecified level of increased conservation.

Finally, CFC recommends that the Commission conduct further analysis and adopt seasonal rates for Suburban.[18] CFC ignores the fact, however, that Suburban and DRA already incorporated seasonality into the rate design. As Suburban testified:

> Well, I believe that the rate structure we now have does consider seasonal rates. As a practical matter, we did extensive work to try to establish what the demand characteristics were, particularly for June through September in summer months, to see how those demand characteristics compare to the total year. I believe the rate structure we've come up with does consider seasonality, and it was specifically designed to do that.[19]

### C. Changes to the Categorization of Multiple Dwelling Unit Residences Would Be Prohibitively Costly and Time Consuming and is Unnecessary

As noted above, among the significant improvements from Suburban's original rate design to the rate design proposed by Suburban and DRA are the adjustments made to take into account the needs of multiple dwelling unit residences. Suburban categorizes these buildings as residential within its billing system, but does not track them separately from single-family residences. Under Suburban's original rate design, conservation rates would have disparately affected these multiple dwelling unit residences. This is troubling because, as Suburban and DRA noted, low-income consumers often live in multiple dwelling unit residences. Because there are more people living in them, these buildings are characterized by higher consumption (even when implementing conservation measures) than a single-family home, which would result in more water being purchased at the higher block rate. Although residents of such buildings do not usually pay for water service directly, increases in water rates would likely be passed on to them in the form of higher rent.

CFC finds fault with Suburban's characterization of multiple dwelling unit

[18] CFC Brief, p. 16.

[19] RT 61:26 – 62:6 (Kelly/Suburban).

buildings as residential. CFC claims:

> If Suburban's multi-family buildings had been treated like commercial customers, as in the Cal Water settlement, there would have been no need to change the first tier proposed by Suburban in its initial application, or to ignore DRA's parameters.[20]

Suburban's account classification of multi-family customers, however, fully complies with the Commission's Uniform System of Accounts ("USOA") for Water Utilities, 1955, p. 82. The USOA does not specify whether multi-family customer sales should be classified as "Residential Sales" or as "Business Sales." It does not even mention multi-family customer sales. Just because Suburban classifies multi-family customers one way and Cal Water classifies them another way does not make Suburban wrong.

To address this perceived issue, CFC recommends that Suburban remove multiple dwelling unit residences from the residential class and treat them as commercial customers.[21] However, as Suburban testified, identifying and culling multiple dwelling unit residences from Suburban's residential customer billing data base would represent a monumental effort that would be immensely costly and time consuming.[22] The Water Action Plan is clear that the Commission should use "existing tools" to strengthen utility conservation programs,[23] not spend time and effort developing new tools when there is such an urgent need for water conservation in California. The Commission should reject CFC's recommendations.

### D. Suburban and DRA's Proposed Rate Design Cannot be Modified In a

[20] CFC Brief, p. 17.

[21] *Id.*, p. 3.

[22] Exh. 3, Kelly Further Direct Testimony, p. 11.

[23] "The Commission will use existing tools to strengthen utility conservation programs, and will provide the necessary direction to do so by initiating formal proceedings where appropriate." (Water Action Plan, p. 4. Emphasis added.)

**Piecemeal Fashion**

CFC advocates tinkering with Suburban and DRA's proposed rate design by lowering the break point between blocks, adding a third tier, having different rates by season, and excluding multiple dwelling unit residences from the residential category. Conspicuously absent, however, is an analysis by CFC of the impact of these changes on the overall rate design.

The rate design proposed by Suburban and DRA is an integrated whole. Changes to the breakpoint and number of tiers or changing rates by season will have a ripple effect throughout the entire rate design. Due to the multiple considerations that must be evaluated when developing a conservation rate design, particularly the need for revenue neutrality, it is not possible to merely change a few aspects of the rate design. Rather, a new rate design that incorporates a lower break point, three blocks, rates that change with the seasons, and excludes multiple dwelling unit residences would have to be developed from the ground up. CFC, of course, failed to provide a new rate design that incorporates its proposed changes.

In making its recommendations, CFC repeatedly cites to the rate designs of other water purveyors, such as the Los Angeles Department of Water and Power or the Irvine Ranch Water District. At the evidentiary hearing, CFC's witness admitted that she did not know when these rate designs (or other rate designs provided by CFC for comparison) were implemented or whether they had changed over time.[24] CFC also testified that it did not know whether these water providers served a customer base with similar customer demographics (such as income levels) or geography as Suburban.[25] Finally, and most importantly, CFC admitted that it did not have any information as to the effectiveness of these or other rate designs.[26] Given the almost complete lack of information on these rate designs, it would be improper for the Commission to look to them for guidance. The Commission must reject CFC's suggested modifications.

[24] RT 530:1-20 (Wodtke/CFC).

[25] RT 531:1-20 (Wodtke/CFC).

[26] RT 532:15-21 (Wodtke/CFC).

### E. Data Collection

In addition to its rate design/WRAM and low-income settlements with DRA, Suburban also entered into a settlement with the Joint Intervenors on customer outreach and education and data collection and reporting. In the settlement agreement filed with the Commission on August 10, 2007, Suburban describes the extensive data that it will provide to the Commission and interested parties to assist in the evaluation of the impact and effectiveness of conservation rates. CFC, however, recommends that the Commission modify the settlement between Suburban and the Joint Intervenors to require Suburban to provide weather-normalized monthly usage data.[27]

Although Park Water Company has agreed to provide weather-normalized monthly usage data, Suburban cautions the Commission against making this a requirement for all water companies. First, the weather-normalized data provided for use in general rate case proceedings does not directly correlate to the data needed for rate design analysis. Second, there are innumerable variables that impact water usage other than weather, such as demographics, the economy, and changing yard size brought about by new landscaping. For Suburban and other utilities to routinely provide general rate case weather normalize data for the purpose of evaluating the effectiveness of conservation rates would be extremely misleading. The Commission should reject CFC's proposed modification and adopt the settlement agreement between Suburban and the Joint Intervenors unchanged.

## III. JOINT INTERVENORS

In developing the LIRA program, Suburban and DRA balanced the interests of low-income customers against the need to encourage conservation. The Joint Intervenors recommend upsetting this delicate balance by modifying the LIRA program to provide a percentage discount of the total customer bill.[28] Unlike the Joint Intervenors, Suburban and

[27] CFC Brief, p. 39.

[28] Joint Intervenors Brief, pp. 2-3.

DRA also took into account the impact of the LIRA discount on non-qualifying customers, as well as the costs associated with providing a flat discount versus a percentage discount. These at times competing interests are best served by the flat discount proposed by Suburban and DRA.

**A. Suburban and DRA Balanced a Variety of Interests to Develop a Fair and Reasonable LIRA Discount**

The Joint Intervenors claim that Suburban and DRA "place undue emphasis on the Commission's conservation goals."[29] Actually, the Joint Intervenors do not place enough emphasis on conservation. Instead, the Joint Intervenors seek to maximize the discount provided to LIRA customer without thought of the consequences.

As discussed above, Suburban and DRA proposed to provide qualifying low-income customers with a $6.50 reduction on their customer bills as part of the Suburban/DRA LIRA settlement agreement. Although Suburban and DRA considered a percentage discount when they developed the low-income program proposal, they rejected it due to concerns that it would interfere with the goals of the conservation rate design. A 15% reduction as recommended by the Joint Intervenors in the total customer bill could mask the conservation signals sent by the new rate design.

A discount based on the total bill, rather than a $6.50 credit, could offset increased charges due to the conservation rate design. This would mean that these customers would not perceive the price signal to conserve water. Not only would the amount of the credit increase with greater usage, but the credit would more than offset by a wide margin the pricing signal that otherwise occurs at the 20ccf breakpoint.[30] The LIRA credit must remain a flat discount rather than a percentage discount in order to avoid this unwanted result.

**B. The Joint Intervenors Offer Insufficient Support for Their Proposal**

[29] Joint Intervenors Brief, p. 4.

[30] Exh. 3, Kelly Further Direct Testimony, pp. 7-8.

At the evidentiary hearing, the TURN witness, Robert Finkelstein, testified that that TURN had performed little to no analysis of the relative impact of the percentage discount proposal. Mr. Finkelstein testified that he did not know what percentage of Suburban's low-income customers live in single-family residences as opposed to multiple dwelling unit residences.[31] Mr. Finkelstein testified that he did not know how many of Suburban's customers would fall into the low-income high-usage category that would most benefit from a percentage discount.[32] When asked whether he had done any analysis of the water usage patterns of low-income customers, Mr. Finkelstein admitted, "I have not done any particular study of it."[33] When asked about the cost of implementing a percentage discount as opposed to a flat discount, Mr. Finkelstein conceded, "As limited to the cost to the billing system, I don't know if it would be greater or less."[34] Finally, Mr. Finkelstein confessed that TURN did not consider the impact of its proposal on the non-qualifying customers.[35]

Given this overwhelming lack of evidence and analysis, the claims made by the Joint Intervenors in their brief are unsupported and should be dismissed by the Commission.

### C. The Statutory Language and Commission Precedent Support Suburban and DRA's Proposal

In their brief, the Joint Intervenors claim that both the statutory language and Commission precedent support their percentage discount proposal. This is incorrect and based on a selective reading of the statutory language and Commission caselaw. The statutory language and Commission precedent actually provide support for the flat discount proposed by

[31] RT 88:12-16 (Finkelstein/TURN).

[32] RT 88:16-17 (Finkelstein/TURN).

[33] RT 89:4-5 (Finkelstein/TURN).

[34] RT 91:21-22 (Finkelstein/TURN).

[35] RT 93:1-4 (Finkelstein/TURN).

Suburban and DRA.

Section 739.8 (c) addresses the intersection of the needs of low-income customers and the goal of encouraging conservation. The statute states, "The Commission shall consider and may implement low-income ratepayers in order to provide appropriate incentives and capabilities to achieve water conservation goals." The Joint Intervenors interpret this statute to mean that it is up to the rest of the ratepayers, not low-income customers, to achieve conservation goals. This interpretation makes little sense. There is no reason to exempt low-income customers from conservation policies, nor does the statute provide a basis to do so. It is far more reasonable to interpret the statute to mean that the Commission should establish low-income support programs that do not thwart conservation goals.

Commission precedent similarly supports a flat discount. The Commission has already approved flat discounts for at least five Class A Water utilities.[36] The Joint Intervenors are able to cite to only two cases where the Commission has approved a percentage discount for low-income customers.[37] Moreover, the Joint Intervenors admit that in one of the cases the Commission provides only "limited discussion" of the issue and in the other the Commission

[36] *In the Matter of the Application of California Water Service Company (U-60-W), a Corporation, for Authority to Implement a Low-Income Ratepayer Assistance Program in Compliance with Decision 03-09-021 in Application 01-09-062*, D.06-11-053, 2006 Cal. PUC LEXIS 477 ("2006 Cal. PUC LEXIS 477"); *Application of California-American Water Company (U 210 W) for Authorization to Implement a Low Income Assistance Program in its Sacramento and Larkfield Districts*, D.06-11-052, 2006 Cal. PUC LEXIS 491 ("2006 Cal. PUC LEXIS 491"); *In the Matter of the Application of Park Water Company (U 314 W) for Authority to Increase Rates Charged for Water Service by $ 1,680,500 or 8.21% in 2007, $ 571,181 or 2.57% in 2008, and $ 658,677 or 2.88% in 2009*, D.06-10-036, 2006 Cal. PUC LEXIS 407 ("2006 Cal. PUC LEXIS 407"); *In the Matter of the Application of Apple Valley Ranchos Water Company (U346W) for Authority to Increase Rates Charged for Water Service by $ 2,748,100 or 18.56% in 2006, $ 496,580 or 2.69% in 2007, and $ 1,075,879 or 5.46% in 2008,* D.05-12-020, 2005 Cal. PUC LEXIS 533 ("2005 Cal. PUC LEXIS 533"); and *In the Matter of the Application of San Gabriel Valley Water Company (U 377 W) for Authority to Implement a Low-Income Rate in its Los Angeles Division in Compliance with Decision 02-10-058 in Application 01-10-028*, D.05-05-015, 2005 Cal. PUC LEXIS 167 ("2005 Cal. PUC LEXIS 167").

[37] Joint Intervenors Brief, pp. 11-12.

explicitly states that the program is not intended to serve as a model for other utilities.[38] By contrast, in a decision supporting a flat discount, the Commission explicitly rejected the arguments set forth by the Joint Intervenors in this proceeding. The Commission stated:

> By lowering the readiness-to-serve charge only, there is no adverse incentive to use water unwisely. Conversely, applying a discount to the total bill and/or to the quantity rate, would not promote conservation. Hence, we find San Gabriel's proposal to discount the service charge only reasonable and consistent with § 739.8.[39]

In keeping with the statutory language and Commission precedent, the Commission should approve the flat discount proposed by Suburban and DRA.

## IV. DIVISION OF RATEAYER ADVOCATES

As noted above, Suburban is seeking recovery of expenses that it has and will incur as part of this proceeding. This includes the costs associated with developing and establishing a conservation rate design and low-income support program, legal and consulting services, public education and outreach expenses, and data collection and reporting expenses. The two most significant categories of expenses for this proceeding are the costs for rate design and legal fees. As discussed in Suburban's opening brief, DRA does not dispute Suburban's recovery of these costs in principle, nor has it made any objections to specific cost components.[40] Additionally, in its opening brief, DRA states that it does not object to Suburban tracking costs incurred after a decision in Phase 1A of this proceeding in a memorandum account.[41] Therefore, only Suburban's recovery of costs incurred before a Commission decision in Phase 1A of this proceeding are in dispute.

In its opening brief, DRA repeats its previous arguments against retroactive

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[38] *Id.*, p. 11.

[39] 2005 Cal. PUC LEXIS 167,*6

[40] Suburban Brief, p. 6.

[41] DRA Brief, pp. 2-6.

ratemaking. It attempts to distinguish Commission caselaw concerning recovery of expenses already incurred. DRA's analysis of Commission precedent is thin, however, and does not compare to the extensive Commission precedent supporting Suburban's recovery of the costs associated with this proceeding. In addition, DRA fails to adequately address Suburban's equitable treatment arguments. Suburban has demonstrated that the costs related to these proceedings are not included in Suburban's current rates. The Commission has the authority to allow recovery of these costs and equity supports doing so.

### A. Commission Precedent Supports Suburban's Request

In their opening briefs, both Suburban and DRA discussed D.90-10-036. In that case, the Commission allowed California American Water to recover in rates the costs incurred by the company for studies performed in connection with the resolution of the long-term water supply solution in Monterey as well as the regulatory expenses incurred to obtain that recovery.[42]

DRA attempts to distinguish this case by focusing on the recovery of the preliminary studies, noting that capital expenditures can be placed into rate base after they are incurred. DRA does not address the regulatory expenses that the Commission authorized for recovery.

With regards to the regulatory expenses, the Commission's Water Utilities Branch ("Branch") made arguments very similar to those made by DRA in this case. Branch argued that the regulatory expenses were likely "covered already in Cal-Am's present rates by Cal-Am's projections of historical expenses for payroll and outside and regulatory expenses."[43] As in this case, however, the Branch's comments were generic rather than specific. The Commission noted that California American Water testified that the expenses were not included or even

[42] *Application of California-American Water Company*, D.90-10-036, 1990 Cal. PUC LEXIS 912; 38 CPUC 2d 15 ("1990 Cal. PUC LEXIS 912").

[43] *Id.*,*26.

contemplated at the time of the previous GRC.[44] Suburban has provided similar testimony in this case.

The fact that some of the costs that the Commission allowed California American Water to recover were capital expenditures is not relevant. For the purposes of applicability to the current proceeding, the fact that the Commission allowed California American Water to recover expenses in rates after they were incurred, as well as the policy and equity issues the Commission took into consideration, are what is important. Of particular importance to the Commission in allowing recovery of these expenses was the fact that California American Water incurred them in response to specific Commission decisions. The Commission stated, "It would be unjust for the Commission to direct the undertaking of studies, and not allow the utility to be compensated for that undertaking."[45]

Similar to the California American Water case, Suburban incurred the expenses related to this proceeding in response to an explicit Commission order. As with that case, it would be unjust to not allow Suburban to be compensated for its undertaking in this proceeding.

In its opening brief, DRA also attempted to show that Commission caselaw supported its interpretation of the recovery of rate case expenses. DRA cited a single case that included very little discussion of the subject.[46] By contrast, in its brief Suburban cited decades of Commission precedent supporting the policy that in a general rate case, the costs incurred to prepare and litigate that case form the basis of the regulatory expense category, and water utilities commonly amortize those costs over a three-year period.[47]

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[44] *Id.*,*26.

[45] 1990 Cal. PUC LEXIS 912,*30.

[46] DRA Brief, p. 5.

[47] Suburban Brief, pp. 7-9.

### B. It Would Be Unjust to Not Allow Suburban to Be Compensated for its Undertaking in this Proceeding

As Suburban discussed in its opening brief, the seeds for Suburban's participation in the current proceeding were sewn in Suburban's most recent general rate case. In that case, Suburban and DRA entered into a settlement agreement that resolved all contested issues, including regulatory commission expenses. As part of that settlement, Suburban and DRA noted that the issue of conservation rate design would be addressed in Suburban's next general rate case.[48] Instead, in the Opinion Adopting Settlement in Suburban's recent general rate case, D.06-08-017, the Commission explicitly ordered Suburban to file an application for a conservation rate design, WRAM and low income program.[49]

DRA's contention that the costs associated with this proceeding are already included in current rates is incorrect. As DRA admitted, the Commission did not make any provision for Suburban's costs for this proceeding as part of that decision. In keeping with the Commission policy and precedent discussed above, the regulatory expense amount authorized in Suburban's most recent rate case decision represents the amortization of the expenses Suburban incurred to prepare and litigate that rate case application. Additionally, as mentioned previously, Suburban and DRA entered into a settlement in Suburban's last general rate case. That means that Suburban expected to recover the costs of developing and litigating these programs as part of its regulatory expense in its next general rate case. That also means that the regulatory expense and customer service expense amounts agreed to by Suburban and DRA did not take into account this proceeding, I.07-01-022.[50]

[48] Exhibit 7, Joint Motion for Adoption of the Settlement Agreement, p. 4, fn. 6

[49] 2006 Cal. PUC LEXIS 369,*21, Ordering Paragraph 2.

[50] Exhibit 4, Kelly Rebuttal Testimony, pp. 2-3.

Additionally, Suburban generally does not employ outside counsel or outside consultants for Commission proceedings other than general rate cases.[51] Since Suburban generally does not incur outside counsel or outside consultant expenses in proceedings that occur in between rate cases, neither Suburban's historical expenses nor its forecasted expenses would include outside counsel or consultant expenses for a proceeding such as this. Unless a proceeding such as this was expected, which, as noted above, it most definitely was not, the costs associated with it would not be included in Suburban's rates.

Suburban's participation in this proceeding is not voluntary; the Commission explicitly ordered Suburban to file its conservation rates and low-income support program application. Suburban's current rates do not provide for this proceeding. Moreover, Suburban's first opportunity to seek recovery of the costs associated with this proceeding came in its application.

The California American Water case discussed above demonstrates that the Commission has the authority to deviate from its traditional practices when equity demands. Indeed, the California Supreme Court has found that the policies against retroactive ratemaking do not apply to costs that do not fit into the category of "general ratemaking."[52] Given the unique procedural history leading to Suburban's request, the Commission should find that Suburban's recovery of the expenses associated with this proceeding do not fit into the category of "general ratemaking" and that retroactive ratemaking concerns need not bar their recovery.

Adopting DRA's position would mean that Suburban would have no opportunity to recover expenses that it was ordered by the Commission to incur. This would be unjust and inequitable. Recovery of these expenses is consistent with Commission policy and precedent. Contrary to DRA's claims, these expenses are not already included in Suburban's current rates,

[51] RT 64:8-12 (Kelly/Suburban).

[52] *SoCalEd v. Public Utilities Commission*, 20 Cal. 3d 813; 1978 Cal. LEXIS 203.

nor would recovery of these expenses violate policies against retroactive ratemaking. The Commission should disregard DRA's arguments and authorize Suburban to recover the expenses it incurs associated with this proceeding.

## V. CONCLUSION

The objections of CFC, the Joint Intervenors, and DRA addressed above are without merit. Rather than creating a whole new conservation rate design and delaying implementation of conservation rates for several years, the Commission should approve the rate design/WRAM settlement between Suburban and DRA. Additionally, the Commission should not thwart the conservation efforts included in that rate design by adopting a percentage discount for low-income customers, as advocated by the Joint Intervenors. The flat LIRA discount proposed by Suburban and DRA successfully balances the need to encourage conservation against the need to assist low-income customers and should be adopted by the Commission. Finally, law and equity support Suburban's recovery of the costs associated with this case. The Commission should reject DRA's arguments against Suburban's recovery of these costs in rates.

Dated: September 17, 2007

Respectfully submitted,

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## PROOF OF SERVICE

I, Cinthia A. Velez, declare as follows:

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is STEEFEL, LEVITT & WEISS, One Embarcadero Center, 30th Floor, San Francisco, California 94111-3719. On September 17, 2007, I served the within:

***Reply Brief of Suburban Water Systems on Phase 1A Issues***

on the interested parties in this action addressed as follows:

***See attached service list***

☒ **(BY PUC E-MAIL SERVICE)** By transmitting such document(s) electronically from Steefel, Levitt & Weiss, San Francisco, California, to the electronic mail addresses listed above. I am readily familiar with the practices of Steefel, Levitt & Weiss for transmitting documents by electronic mail, said practice being that in the ordinary course of business, such electronic mail is transmitted immediately after such document has been tendered for filing. Said practice also complies with Rule 1.1 of the Public Utilities Commission of the State of California and all protocols described therein.

☒ **(BY MAIL)** By placing such document(s) in a sealed envelope, with postage thereon fully prepaid for first class mail, for collection and mailing at Steefel, Levitt & Weiss, San Francisco, California following ordinary business practice. I am readily familiar with the practice at Steefel, Levitt & Weiss for collection and processing of correspondence for mailing with the United States Postal Service, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for collection.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on September 17, 2007, at San Francisco, California.

Cinthia A. Velez

**SERVICE LIST**
**I.07-01-022; A.06-09-006; A.06-10-026; A.06-11-009; A.06-11-010; A.07-03-019**
**(Last changed: August 27, 2007)**

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